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ROBERT TRENT JONES II, INC.
ROBERT TRENT JONES LICENSING GROUP, LLC

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ROBERT TRENT JONES II, INC. and
ROBERT TRENT JONES LICENSING
GROUP, LLC

Plaintiffs,

v.

GFSI, INC. d/b/a GEAR FOR SPORTS,
INC.

Defendant.

Case No. C 07-4913 SC

**JOINT CASE MANAGEMENT
STATEMENT AND [PROPOSED]
ORDER**

Date: January __, 2008

Time: _____

Judge: Samuel Conti

Courtroom _____

Pursuant to the Court's Order dated September 21, 2007, the parties to the above-entitled action jointly submit this Case Management Statement and Proposed Order and request that the Court adopt it as its Case Management Order in this case.

1. JURISDICTION AND SERVICE:

Plaintiffs', Robert Trent Jones II, Inc. ("RTJ2, Inc.") and Robert Trent Jones Licensing Group, LLC ("RTJ Licensing") (collectively "Plaintiffs"), claims arise under the Lanham Act, 15 U.S.C. §§ 1114, 1125(a), and 1125(c); California Business and Professions Code §§ 14330 et seq. and 17200 et seq.; common law of trademark infringement, trademark dilution and unfair competition; and California law regarding breach of contract and fraudulent and negligent misrepresentation.

This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1332, 1338(a) and 15 U.S.C. § 1121. The Court also has original and supplemental jurisdiction over Plaintiffs' state or common law claims pursuant to 28 U.S.C. §§ 1367 and 1338(b). Venue is proper in the Northern District of California pursuant to 28 U.S.C. §§ 1391(b) & (c). Defendant GFSI, Inc. d/b/a Gear for Sports, Inc. ("Defendant") does not contest jurisdiction and venue.

There are no parties that remain to be served.

2. FACTS:

a. Brief Chronology of the facts:

Plaintiff RTJ2, Inc. owns and is using the ROBERT TRENT JONES trademarks and service marks as well as the rights of publicity of the golf course architect Robert Trent Jones, Jr. Plaintiff RTJ2, Inc. granted a license of certain of these rights to RTJ Licensing. In 2004, Defendant and RTJ Licensing executed a License Agreement regarding the manufacture and sale

1 of ROBERT TRENT JONES branded golf apparel. The License Agreement commenced on May
2 1, 2005 and expires on April 20, 2015 and licenses certain intellectual property, namely certain
3 U.S. trademark registrations for the mark ROBERT TRENT JONES and the Robert Trent Jones,
4 Jr.'s rights of publicity (collectively, "Licensed Rights"), to Defendant on an exclusive basis for
5 use in connection with the manufacture, display, sale, marketing, distribution and/or
6 reproduction of specific golf apparel ("Licensed Products") in exchange for specified royalties.
7 The License Agreement specified certain obligations and restrictions for the parties.

8
9 Plaintiffs contend that this action was filed as a result of certain actions or inactions of
10 Defendant in breach of the License Agreement. Defendant stated to RTJ Licensing in June 2007
11 that it no longer desired to pursue the licensing relationship, despite a ten-year term in the
12 License Agreement. Defendant also stated that it would not produce a new 2008 line of apparel.
13 Plaintiffs now claim a number of other breaches of the License Agreement and they initiated this
14 action to address the parties' dispute.

15 Defendant contends it has abided by the License Agreement and that Plaintiffs' claims
16 are a meritless attempt to renegotiate the terms of the License Agreement.

17 **b. Principal factual issues which the parties dispute:**

18 The factual issues set forth below are not meant to be final or exhaustive, and the parties
19 reserve the right to reformulate these issues or include other appropriate issues as they develop or
20 become known to the parties through the course of discovery and investigation. Furthermore, the
21 characterization of an issue as "factual" or "legal" is not necessarily a concession that it is not the
22 other or both.

- 23
24 1. Whether or not Defendant sold Licensed Products to discount stores.

1 2. Whether or not Defendant sold damaged, defective, seconds, or product
2 that is otherwise substandard bearing the Licensed Rights.

3 3. Whether or not Defendant sold “private label” apparel that is identical to
4 Licensed Products.

5 4. Whether or not Defendant complied with its royalty obligations under the
6 License Agreement.

7 5. Whether or not Defendant sold Licensed Products beyond the Licensed
8 Territory.

9 6. Whether or not Defendant provided RTJ Licensing with samples, labeling
10 and packaging for 2007 for RTJ Licensing’s quality review and approval.

11 7. Whether or not Defendant provided information required under the
12 License Agreement to RTJ Licensing substantiating Defendant’s investment in the ROBERT
13 TRENT JONES brand.

14 8. Whether or not Defendant submitted the required Marketing, Distribution,
15 Financial and Quality Plans under the License Agreement.

16 9. Whether or not Defendant used Licensed Products and advertising and
17 marketing materials for Licensed Products that are not approved by RTJ Licensing.

18 10. Whether or not Defendant complied with its obligations under the License
19 Agreement in executing an agreement with Under Armour.

20 11. Whether or not Defendant complied with its obligations regarding an audit
21 conducted by RTJ Licensing.

22 12. Whether or not Defendant permitted the inclusion of names of other
23 entities with the Licensed Rights in advertising, promotional and other material.
24
25

1 13. Whether or not Defendant is displaying, selling, marketing, distributing,
2 and advertising other products in conjunction and association with Licensed Products.

3 14. Whether or not Plaintiffs have suffered any damages as a result of any
4 claimed improper conduct by Defendant, and, if so, the amount of any such damages.

5 15. Defendant suggests that whether the Licensed Rights had or have the
6 value represented by Plaintiffs at the time the License Agreement was negotiated and signed.
7 Plaintiffs do not agree that there is any such issue in the case; certainly the pleadings do not
8 suggest any such issue.
9

10 **3. LEGAL ISSUES:**

11 The principal legal issues in dispute are set forth below. These legal issues are not meant
12 to be final or exhaustive, and the parties reserve the right to reformulate these issues or include
13 other appropriate issues as they develop or become known to the parties through the course of
14 discovery and investigation. Furthermore, the characterization of an issue as “factual” or “legal”
15 is not necessarily a concession that it is not the other or both.
16

17 1. Whether or not Defendant acted in bad faith and breached its duty of good
18 faith and fair dealing.

19 2. Whether or not Defendant’s conduct, actions or inactions constituted
20 fraudulent misrepresentation.

21 3. Whether or not Defendant’s conduct, actions or inactions constituted
22 negligent misrepresentation.

23 4. Whether or not the License Agreement prohibits the sale of Licensed
24 Products to discount stores.
25

1 5. Whether or not the above-stated Defendant's actions or inactions
2 constituted a breach of its obligations under the License Agreement.

3 6. Whether or not Defendant's conduct, actions or inactions constituted
4 trademark infringement.

5 7. Whether or not Defendant's conduct, actions or inactions constituted
6 trademark dilution.

7 8. Whether or not Defendant's conduct, actions or inactions constituted
8 unfair competition.

9 9. Whether or not any claimed breaches by Defendant were intentional
10 and/or willful.

11 10. Whether or not any claimed trademark infringement and/or trademark
12 dilution by Defendant was willful.

13 11. Whether or not Plaintiffs are entitled to damages under the Lanham Act
14 (15 U.S.C. § 1117(c)); California state law; common law of trademark infringement, trademark
15 dilution and/or unfair competition; and/or their breach of contract claims and misrepresentation
16 claims.

17 12. Whether or not Plaintiffs are entitled to treble damages under 15 U.S.C. §
18 1117(b) and punitive damages.

19 13. Whether or not Plaintiffs are entitled to recovery of their attorneys' fees
20 and costs under 15 U.S.C. §§ 1117(a) & (b).

21 14. Whether or not Plaintiffs are entitled to recovery of their attorneys' fees
22 and costs under the License Agreement.

1 15. Whether or not Plaintiffs are entitled to injunctive relief under 15 U.S.C. §
2 1116, common law, and California law.

3 16. Whether or not Defendant is entitled to recovery of its attorneys' fees and
4 costs under the License Agreement or applicable law. Plaintiffs contend that Defendant has not
5 sought recovery of its attorneys' fees under the License Agreement or applicable law in the
6 current pleadings.

7
8 **4. MOTIONS:**

9 **a. Pending Motions:**

10 Plaintiffs filed a Motion for Preliminary Injunction on December 3, 2007. The Motion
11 seeks to enjoin Defendant from selling or distributing Licensed Products to discount stores and to
12 enjoin Defendant from selling, displaying or distributing Licensed Products that are damaged,
13 defective, seconds, or otherwise substandard product. This Motion is pending and a hearing on
14 the Motion is currently scheduled for January 25, 2008.

15 **b. Anticipated Motions:**

16 Plaintiffs and Defendant anticipate filing a motion for summary judgment after sufficient
17 discovery has been conducted. The parties also reserve the right to file appropriate motions in
18 the event discovery or other activity in the case warrants such a filing.

19
20 **5. AMENDMENT OF PLEADINGS:**

21 The parties have not conducted any discovery in this matter; however, Plaintiffs may add
22 a party to this action or amend their pleadings after taking such discovery. Defendant may also
23 add a party and counter or cross claims after taking discovery. The parties request the right to
24 amend the pleadings and/or add parties and propose a deadline of March 17, 2008 to do so.
25

1 **6. EVIDENCE PRESERVATION:**

2 Plaintiffs have taken steps, including the placement of a litigation hold for documents,
3 including electronically stored information, to preserve evidence relevant to the issues
4 reasonably evident in this action.
5

6 Defendant has taken steps, including the placement of a litigation hold for documents,
7 including electronically stored information, to preserve evidence relevant to the issues
8 reasonably evident in this action.

9 **7. DISCLOSURES:**

10 The parties agree that they will make initial disclosures in compliance with the Court's
11 Order Setting Initial Case Management Conference and ADR Deadlines filed on September 21,
12 2007.
13

14 **8. DISCOVERY:**

15 **a. Discovery**

16 An initial round of written discovery was served upon Defendant by Plaintiffs following
17 the Rule 26(f) Conference. Responses are not yet due at the time of this submission. The parties
18 anticipate several rounds of written discovery, including document requests, interrogatories and
19 requests for admission, and depositions. The parties have met and conferred pursuant to Rule
20 26(f) of the Federal Rules of Civil Procedure and have agreed to abide by the discovery
21 limitations set forth in the FRCP. The parties agree to exchange discovery in Adobe Acrobat pdf
22 format, with the option for the receiving party to request other formats on a case-by-case basis.
23 Also, the parties are negotiating a stipulated protective order regarding the handling of
24 confidential documents and information to be disclosed in the litigation.
25

1 **b. Inadvertent disclosure:**

2 The parties have agreed that if document or information, including electronically stored
3 information, is inadvertently produced that is subject to the attorney-client privilege, work
4 product doctrine, and/or other claim of protection, then Rule 26(b)(5) of the Federal Rules of
5 Civil Procedure will govern the handling of such documents or information, including possible
6 presentment to the Court for determination of whether or not privilege or protection exists, if the
7 parties dispute such claim of privilege or protection. If privilege or protection exists, then any
8 such production will not constitute a waiver of the privilege.
9

10 **9. CLASS ACTION:**

11 This is not a class action.

12 **10. RELATED CASES:**

13 There are no related cases.

14 **11. RELIEF SOUGHT:**

15 **a. Relief Sought by Plaintiffs:**

16 Plaintiffs seek both injunctive relief and monetary damages. Plaintiffs seek monetary
17 damages by reason of Defendant's trademark infringement, unfair competition, trademark
18 dilution, breach of contract and misrepresentation claims as set forth in their Complaint.
19 Plaintiffs reserve the right to modify the below computations after they have been afforded time
20 to conduct discovery. Plaintiffs specifically seek:
21

- 22 1. Damages in the amount of \$1,739,258.45 (the present value of guaranteed future
23 royalty payments under the License Agreement discounted for inflation).
24 2. Defendant's profits from the sale of products in breach of the License Agreement.
25

1 3. The dollar value of damage to the goodwill associated with the famous Robert Trent
2 Jones trademarks and service marks as a result of Defendant's actions or inactions.

3 4. All royalty deficiencies including interest pursuant to the License Agreement.

4 5. The costs associated with an audit conducted by RTJ Licensing.

5 6. The present value of a stand-alone Robert Trent Jones apparel company at the end of
6 the ten-year License Agreement.

7 7. An award of treble damages pursuant to 15 U.S.C. § 1117(b) and punitive or
8 exemplary damages.

9 8. Recovery of attorneys' fees, out of pocket expenses and costs pursuant to 15 U.S.C.
10 §§ 1117 (a) & (b) and the terms of the License Agreement between the Parties.

11 Plaintiffs also seek injunctive relief and recently filed a motion for preliminary
12 injunction. The injunction will apply to Defendant, any business entity owned or controlled by
13 Defendant, and their officers, directors, shareholders, agents, servants, employees,
14 subcontractors, partners, licensees, subsidiaries, affiliates and related companies and entities,
15 representatives, attorneys and other persons or entities acting in concert or participation with any
16 of them and seeks:

17 1. To enjoin the sale and distribution of Licensed Products to discount stores.

18 2. To enjoin the sale, display and distribution of Licensed Products that are damaged,
19 defective, seconds or product that is otherwise substandard to any reseller.

20 3. Plaintiffs also seek to have Defendant provide a copy of the Injunction to "all
21 discount stores to which Defendant has sold Licensed Products and issue a stop sale request,"
22 requesting that the discount stores comply with this order and cease all sales of Licensed
23 Products until this action is resolved or final judgment is entered by the Court.
24
25

1 **b. Relief Sought by Defendant:**

2 Defendant seeks its attorneys' fees and costs pursuant to the License Agreement and
3 applicable law.

4 **12. SETTLEMENT AND ADR:**

5 Plaintiffs contend that they have made extensive efforts to settle this matter and have
6 been unable to do so due to Defendant's failure to make a reasonable monetary offer. The
7 Parties are amenable to either mediation or a settlement conference by the Judge. The Parties
8 have filed a Stipulation to ADR Process selecting mediation; however, the parties would like to
9 conduct a mediation or settlement conference before a magistrate judge. Plaintiffs further
10 contend that they will be in a better position to negotiate settlement after they have taken limited
11 discovery regarding the extent of Defendant's breaches and conduct.

12 Defendant contends it has made reasonable offers of settlement but that Plaintiffs'
13 demands are unreasonable and unrealistic. Defendant expects discovery will not likely bring the
14 parties closer to any settlement but Defendant will aggressively defend itself and investigate its
15 own remedies to this unsuccessful business relationship.

16 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES:**

17 On December 7, 2007, Plaintiffs filed a Declination to Proceed Before Magistrate Judge
18 and Request for Reassignment To a United States District Judge.

19 **14. OTHER REFERENCES:**

20 The parties do not believe this case is suitable for reference to binding arbitration, a
21 special master, or the Judicial Panel on Multidistrict Litigation.
22
23
24
25

1 **15. NARROWING OF ISSUES:**

2 There are no issues that can be narrowed at this time; however, the parties will endeavor
3 to do so throughout the discovery and litigation process.
4

5 **16. EXPEDITED SCHEDULE:**

6 Plaintiffs do not believe that this type of case can be handled on an expedited basis with
7 streamlined procedures.
8

9 **17. SCHEDULING:**

10 The parties propose the following discovery and court dates:

11	Deadline to Add Parties:	March 17, 2008
12		
13	Deadline to Amend Pleadings:	March 17, 2008
14		
15	Fact Discovery Cutoff:	June 20, 2008
16		
17	Expert Disclosures & Reports:	July 10, 2008
18		
19	Rebuttal Expert Disclosures & Reports:	July 31, 2008
20	Expert Discovery Cutoff:	August 21, 2008
21		
22	Hearing of Dispositive Motions:	October 14, 2008
23		
24	Final Pretrial Conference Date:	November 24, 2008
25		
	Trial Date:	December 8, 2008

1 **18. TRIAL:**

2
3 Plaintiffs have demanded a jury trial. The parties expect that the trial will last four to five
4 court days.

5 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS:**

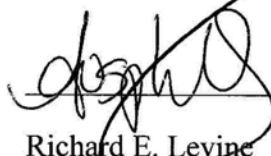
6 Pursuant to Civil L.R. 3-16, Plaintiffs certify that as of this date, other than the named
7 parties, there is no such interest to report. Pursuant to Civil L.R. 3-16, Defendant certifies that as
8 of this date, other than the named party, there is no such interest to report.

9
10 **20. OTHER MATTERS:**

11 The parties are not aware of any other matters.

12
13
14 Respectfully submitted,

15
16 Dated: January 2, 2008



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Dated: January 2, 2008

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PURSUANT TO STIPUATION, IT IS SO ORDERED

Dated: _____

Hon. Samuel Conti
United States District Judge